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NEA FOR ELA  
EB FOR TPP/IPE BOGER  
USTR FOR SAUMS AND GROVES  
COMMERCE FOR OBERG AND ITA/MAC/OIPR PETERS  
NSC FOR WATERS

E.O. 12958: N/A  
TAGS: [ECON](#) [ETRD](#) [KIPR](#) [EG](#)  
SUBJECT: 2007 SPECIAL 301 REVIEW FOR EGYPT

REF: A. STATE 7944

[1](#)B. 2006 CAIRO 1262

[1](#)1. (SBU) SUMMARY: Embassy Cairo recommends that USTR move Egypt from the Special 301 Priority Watch List to the Watch List in recognition of improvements in Egypt's regime for protecting Intellectual Property Rights in 2005 and 2006, and to encourage further progress. During the last two years, GOE officials have made some of the institutional reforms necessary to improve IPR protection, and the government is laying the groundwork for future improvements. Embassy recommended last year that GOE actions were not yet sufficient to warrant removal from the Priority Watch List (ref B). However, following meaningful steps toward IPR reform this past year, we believe we can best influence the process by signaling our support for those GOE officials and institutions that will ultimately determine the state of IPR protection in Egypt. END SUMMARY

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Background  
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[1](#)2. (U) Egypt was listed on the Special 301 Priority Watch List in 1997 for intellectual property protection well below international standards. In 2002, Egypt passed a comprehensive IPR law to protect intellectual property to bring the country into compliance with its TRIPS obligations. The government issued executive regulations dealing with patents, trademarks, and plant variety protection in 2003. In response, USTR moved Egypt from the Priority Watch List to the Watch List that year. However, in late 2003, the Egyptian government issued approvals for local pharmaceutical manufacturers to produce drugs that infringed on U.S. patents, contravening Egypt's obligations to protect the holder of the intellectual property rights. As a result, USTR moved Egypt back to the Priority Watch List in 2004.

[1](#)3. (U) Since that time, the GOE has made progress toward establishing and strengthening institutions necessary to protect intellectual property, and IPR enforcement has improved. Regulations protecting copyright and related rights under the new IPR law were first issued in 2005. Provisions allowing the patenting of pharmaceutical products also took effect in 2005. A modern, computerized Egyptian Patent Office has been working to improve its ability to receive and examine paper or electronically filed patent applications.

[1](#)4. (U) Egypt has also taken advantage of USAID and United

States Patent and Trademark Office (USPTO) technical assistance on topics such as copyright, patent and trademark examination; pharmaceutical patent examination; and IPR enforcement. USAID is working with the GOE to strengthen IPR enforcement, including supporting a Ministry of Justice program to increase the legal awareness of judges on IPR issues and building institutional capacity to handle infringement cases.

¶15. (U) In 2005 and 2006, 1,375 judges (30 percent of sitting judges) received training in intellectual property rights programs. In addition, in 2006, 400 judges from the Courts of First Instance received training on IPR and the use of injunctions. Before this program, judges issued trademark injunctions only once every few years in Egypt. In the months following the program, judges issued 10 injunctions. Also, 150 civil inspectors received training in IPR enforcement procedures.

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Optical Media Piracy and Government Software  
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¶16. (U) High levels of piracy continue to adversely affect most copyright industries in Egypt, including motion pictures, sound recordings, books and other printed matter, and computer software. The GOE has improved its protection of computer software in recent years and took steps to ensure the authorized use of legitimate business software in government departments and schools. However, in its 2007 Special 301 submission, the International Intellectual Property Alliance (IIPA) estimated that 63 percent of business software in Egypt was pirated. IIPA recommends that Egypt remain on the Priority Watch List for 2007 for this reason.

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¶17. (U) In the past, the Ministry of Culture did not effectively enforce exclusive rights for software. In its 2007 Special 301 submission, IIPA listed the creation of an effective enforcement unit under MCIT as its top priority action requested for 2007. New copyright regulations issued in December 2006 give the Information Technology Industry Development Agency (ITIDA), which falls under the Ministry of Communications and Information Technology (MCIT), sole responsibility for copyright law enforcement for software and databases, a step welcomed by U.S. industry.

¶18. (U) ITIDA is developing plans to implement its new mandate under the December 2006 regulations, including awareness campaigns for the public and government officials. ITIDA officials indicate they will assert their new enforcement role more strongly after concluding the awareness campaigns.

¶19. (SBU) The U.S. company Electronic Arts (EA), an electronic games manufacturer, may prove a test case for GOE enforcement in 2007. ITIDA has recently indicated a willingness to work with EA and the Embassy to address long-standing IPR enforcement concerns and has scheduled a meeting with EA officials and Embassy Cairo in March. This will be the first meeting between EA and ITIDA, with its new expanded enforcement role.

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TRIPS, Data Protection, and Folklore  
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¶10. (U) Egypt is the largest producer of pharmaceutical products in the Middle East and North Africa. The 364 registered pharmaceutical companies produce a wide array of drugs worth an estimated \$1.6 billion in 2005. Egypt is also a leading exporter to Arab countries.

¶11. (SBU) In 2004 and 2005, the USG expressed strong concern about Egyptian plans to approve unauthorized copies of U.S.

pharmaceutical products for marketing in Egypt based on confidential test data submitted by U.S. firms. The USG

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noted such action would violate Egypt's TRIPS obligations, its own IPR law, and GOE assurances to the USG. Even so, in late 2005 an Egyptian company introduced an unauthorized generic version of a flagship product of a U.S. pharmaceutical company, while an Egyptian court rescinded a U.S. firm's exclusive marketing rights for a product pending patent approval.

¶12. (U) In accordance with its TRIPS obligations, the Egyptian Patent Office opened the "mailbox" for pharmaceutical patent applications on January 1, 2005, and began examining the approximately 1,500 pharmaceutical patent applications submitted for approval through this process. In late October 2006, the patent office completed substantive examination of its first two pharmaceutical product applications from the mailbox and accepted them for publication. Under the new IPR law, these applications may receive a final grant if no oppositions are filed within 60 days of their publication in the official gazette.

¶13. (U) One of the first mailbox applications accepted for publication was for Eli Lilly's Zyprexa, accepted on October 31, 2006. However, the patent office did not actually publish the application until January 2007, delaying the earliest possible final grant date to March 2007. Delays in publication are now adding unnecessary extra time to the opposition process, which appears a necessary precursor to final issuance. In fact, the Embassy is not aware of any final approvals yet from "mailbox" applications.

¶14. (U) The Ministry of Health and Population (MOHP) issued a decree effective January 1, 2007, to streamline the approval process to 120 days for drugs that have already been approved for marketing in the United States and the European Union, or in other specified circumstances. This is particularly important for the pharmaceutical industry because the data protection period in Egypt runs five years from the date the application for registration is received by the ministry. In recognition of this and other indications by MOHP that it intends to improve IPR protection, PhRMA has recommended moving Egypt to the Watch List for 2007.

¶15. (U) Several companies have reported that MOHP appears to be implementing the decree in such a way that it would avoid

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its TRIPS data protection obligations. The Ministry's Drug Planning and Policy Center has informed the companies that it will not process their applications to register new drugs until the companies state in writing that their applications do not contain any undisclosed data. Protection of undisclosed data, including test data required for marketing approval, is a TRIPS obligation.

¶16. (SBU) The Embassy has raised with the MOHP USG concerns that applicants are not permitted to submit undisclosed data in their file unless specifically requested by the MOHP. This policy is a concern because, if MOHP officials do not require such data for approval of new products, applicants other than the company that developed the product could successfully petition for approval to sell unauthorized copies.

¶17. (U) A government committee has been meeting for more than a year to consider a policy or legislation regarding the protection of traditional knowledge or expressions of folklore. We are not aware of any action taken by this committee. In addition, IPR regulations state that patent applications using traditional knowledge or folklore must state that any traditional knowledge or folklore used in creating the invention must have been properly obtained.

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## Notorious Markets and Counterfeit Goods

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¶18. (U) Pirated DVDs, CDs, software and other counterfeit products are available from street vendors in Egypt although there are no large, notorious markets known to specialize in such goods. However, Embassy noted that Philip Morris cited Port Said on the Suez Canal as being one of the main transit points for counterfeit cigarettes coming into Europe in its 2007 Special 301 submission. According to Philip Morris, Egyptian officials permitted the transshipment of counterfeit cigarettes through an Egyptian port in September 2006, even though the Egyptian Trademark Office had already determined the cigarettes were counterfeit, based on the argument that the cigarettes were not bound for Egypt.

¶19. (U) While infringement of trademarks, textile designs, and industrial designs remains a problem, the GOE has taken steps to improve enforcement by training civil inspectors in IPR enforcement, issuing improved inspection procedures, and taking steps to implement measures at its borders to prevent the importation of counterfeit and pirated goods. The government is developing new regulations and procedures to implement TRIPS obligations relating to border measures. In 2006, the government acceded to the Nice agreement on trademark classification.

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Comment  
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¶20. (SBU) Our long-standing engagement with the GOE on IPR protection has had mixed results, but the overall trend has been generally positive. Although the actual gains during that period have not been dramatic, the GOE's positive steps the last two years give us reason to believe that continued engagement and scrutiny will help us solidify improvement in IPR protection, if we can retain the cooperation and goodwill of like-minded GOE officials. Moving Egypt from the Priority Watch List back to the Watch List will reward positive GOE actions, and demonstrate our own goodwill and our intention to work together with the GOE to promote this vital interest, while leaving us the option to respond to backsliding by returning Egypt to the Priority Watch List in the future, if necessary.  
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